

Award No. 786

Docket No. 715

2-N&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the assignment of 6 carmen helpers and 2 carmen in the transportation yard at Williamson shop, car department, working the hours from 6:00 P. M. to 2:00 A. M. is a violation of Rule 4 current agreement. The employees request the abolishment of the 6:00 P. M. to 2:00 A. M. shift and the employees involved be assigned to the regular shifts.

EMPLOYES' STATEMENT OF FACTS: There are 185 carmen and helpers working at Williamson shop. These men have been assigned to three shifts over a period of several years, in fact, ever since the shop has been established at Williamson. The assignment of the shifts are as follows: First shift hours from 7:00 A. M. to 3:00 P. M.; second shift hours from 3:00 P. M. to 11:00 P. M.; third shift hours from 11:00 P. M. to 7:00 A. M. Approximately 75% of the carmen and helpers are assigned in the transportation yard. The other 25% are assigned to the shop track. On July 16, 1941, the company established another shift in the transportation yard working the hours from 6:00 P. M. to 2:00 A. M., which consisted of two carmen and six carmen helpers, thus making four shifts assigned in the train yards. The men assigned to the 6:00 P. M. to 2:00 A. M. shift were taken from the shop track where they had been regularly assigned from 7:00 A. M. to 3:00 P. M. The local committee immediately protested the assignment of the 6:00 P. M. shift to local officials at Williamson, advising the officials that the establishment of this fourth shift in the train yards, where three shifts are employed over the twenty-four hour period, is a violation of Rule 4 of the current agreement. Local officials claimed not; they claimed that they were assigning the two carmen and the six helpers in accordance with the first paragraph of Rule 5, current agreement. On July 18, 1941, the general chairman of the carmen handled the case with Mr. T. L. Brown, master mechanic, who has jurisdiction over that division, asking that the 6:00 P. M. to 2:00 A. M. shift be not established, owing to the fact that it is a violation of Rules 4 and 5 of the agreement. Mr. Brown stated that the carrier was not violating any rules whatever, and that he would have to decline the employees' request. The general chairman of the carmen discussed the case again on July 26, 1941, with Mr. T. L. Brown, master mechanic, and Mr. Brown refused to make any changes this time. He asked the general chairman to handle the matter further with the general superintendent motive power, Mr. R. G. Henley.

rule. In the absence of such reference it is plain that the second sentence applied to each shift of three shift employment. There is no reason in common sense why there should be flexibility in one and two shift employment and a straight jacket for three shift employment.

When the current agreement was negotiated, the employes proposed the adoption of a Rule 5, which in pertinent part provided:

"The time established for commencing * * * work for all men on each shift shall be the same * * *."

(Emphasis ours.)

The carrier rejected the proposed rule because it lacked the flexibility to meet just such a situation as is presented in the facts of this case. The carrier offered the first paragraph of Rule 5 (set forth above), and it was accepted by the employes. That rule provided for flexibility of starting times for **one and two shift employment and for small groups of men within one; two and three shift employment.** The employes now prosecute this claim as though Rule 5, as originally proposed, had been adopted.

Rules 2, 3, 4 and 5 are no more than an agreed declaration of mutual consideration. Management, for its part, agreed to establish starting times of shifts according to standards desired by the employes in all cases where the requirements of the service permitted. Arbitrary starting times were forbidden and by virtue of the agreement all starting times were made subject to the scrutiny and criticism of this Division. The employes, for their part, agreed that customary starting times of **shifts, individual employes and small groups of employes (within shifts)** were to be departed from when conditions required it.

On the record of this case, where the imperative need for a change of starting time for a small group of employes is undisputed, it is just as arbitrary and unreasonable on the part of the employes to demand an inflexible adherence to a 3:00 P. M. starting time as it would be for the carrier arbitrarily to establish the starting time of a single shift at noon when the work could just as well begin at 7:00 A. M. Such action on the part of the carrier would be condemned by this Division. Even-handed justice requires that the rule cut both ways. But, more important, the letter of the first paragraph of Rule 5 requires it. The carrier requests that the claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The carrier violated Rule 4 of the existing agreement when it established a fourth shift at the Williamson shop and same should be abolished and the employes involved should be assigned to the shifts established in conformity with the existing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1942.